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FROM: Charles Jackson

MESSAGE: IS/WP1--0082 (17 AUG 92)

IS/WP1--0082
17 AUG 92

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M E M O R A N D U M

TO: Active Participants of IS/WP1
FROM: Brenda Fox
DATE: August 17, 1992
RE: Draft on Simulcasting

Attached is the latest version of the ~~draft paper on~~
~~simulcasting~~. Some members of the working party, including
Julian Shepard of MSTV, have indicated that they need some
additonal time to submit edits and comments on the draft. In the
meantime, however, I did want to get a revised copy out, as
promised, in anticipation of our next meeting.

Outline of Simulcasting Issues

A. Simulcasting vis-a-vis Ashbacher.

1. Simulcasting is not required to satisfy Ashbacker.

[illegible]

- a. The eligibility restrictions outlined by the FCC are sufficient to meet the demands of Ashbacker and the presence or absence of simulcasting is of no consequence to the adequacy of the FCC's licensing scheme or adherence to the precepts of Ashbacker.
2. Simulcasting is required to satisfy Ashbacker.
 - a. ~~Some~~ Some believe that a strict simulcast requirement ~~is~~ must be integral to the Commission's public interest rationale for awarding the second channel initially to existing broadcasters only: to bring about a transition from

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NTSC to ATV [REDACTED] without introducing a new service. Permitting broadcasters to utilize the second channel as a new programming service, even in the initial stages of operation, renders it more difficult to justify closing out other applicants (especially others with broadcast experience) and undercuts the theory that ATV is a new technology and not a new program service.

- b. The eligibility rationale is weak [REDACTED] -- there is no basis for granting a preference to parties that are not currently in full operation while disqualifying broadcast licensees of other TV services that are fully operational [REDACTED]. The rationale cannot survive, absent having simulcasting which [REDACTED] must be an integral part of the ATV licensing preference scheme.

B. Simulcasting and First Amendment Issues.

1. A simulcast requirement would have First Amendment implications.
 - a. A simulcast requirement would inhibit broadcaster program decisions and, because of its effect on the exercise of free speech, can only be justified if it is the least restrictive means necessary to achieve the overriding public interest goals underlying the requirement.
 - b. Less restrictive alternatives that would [REDACTED] achieve the public interest goal of protecting service to NTSC viewers [REDACTED] may be available; namely, the likely availability of low cost, readily available down-converters which would permit NTSC-viewer access to ATV programming.
 - c. It has not been demonstrated that, absent a simulcasting requirement, the harm feared, disenfranchisement of NTSC viewers, would be likely to occur -- i.e., it is just as likely that broadcasters would generally simulcast NTSC and ATV programming for reasons given below:

[REDACTED]
[REDACTED]

2. A simulcast requirement would not have First Amendment implications.

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- a. A content-neutral simulcasting regulation is not a restriction on free expression because the availability of the two channels is solely to provide one service, not two separate video services. The Commission's conditional grant of the new spectrum to effectuate a transition from NTSC to ATV is completely in line with its authority to restrict the use of scarce spectrum.
- b. A simulcast requirement would not affect the programming decisions of broadcast licensees; each licensee would remain free to provide whatever content he/she deems appropriate, provided only that the same programming be provided on both the NTSC and ATV channels i.e. on the single service _____.
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

- c. The availability of low-cost down-converters is not an adequate substitute for simulcasting as a means for assuring the continued utility of the public's investment in NTSC receivers and VCR's.
- (1) Depending upon consumers to purchase even low-cost down-converters would mean that NTSC viewers who choose not to purchase (or cannot afford to purchase) the new equipment would be "abruptly deprived of the use of their NTSC receivers" which is precisely what the Commission is seeking to avoid by its "goal of graduating the transition to ATV."

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- (2) Purchases of down-converters would mean further consumer investments in the very technology (NTSC) the FCC is seeking to phase out in favor of ATV.
 - (3) Requiring broadcasters to incur the costs of down-converters would be poor public policy.
 - (a) It would involve a major investment in the old NTSC technology.
 - (b) The enormous costs involved would act as a major deterrent to ATV development and could foreclose the participation of virtually all present broadcasters [REDACTED] in ATV.
- [REDACTED]

II. Practical/Policy Issues.

A. One of the FCC's goals is to introduce ATV [REDACTED] while protecting the existing investment in NTSC consumer equipment during the transition to an all ATV world.

1. A simulcasting requirement is not necessary to achieve this goal.
 - a. If NTSC viewers [REDACTED] were equipped with down-converters, a requirement that ATV [REDACTED] programming also be available to them through simulcasting would be less necessary.
 - b. At least in the initial phases of ATV implementation when ATV receiver penetration is low, broadcasters [REDACTED] can be expected to continue to provide quality NTSC programming whether or not they are required to do so. (PS/WP-3 estimates that even by year 10 ATV will only have achieved penetration rates of 36-56% of [REDACTED] television households.)
 - c. [REDACTED]
Up-conversion and down-conversion will be the most economical way for broadcasters to [REDACTED] produce programs in both [REDACTED] NTSC and ATV.

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Thus, whether or not there is a simulcasting requirement, much programming will be simulcast.

- d. The NTSC audience and hardware investment is not the simplistic (100% - ATV households. It includes NTSC appliances demoted in ATV households. Thus even in years 9-15 one can expect the size of the NTSC audience will still stimulate broadcasters to continue to satisfy the NTSC market.
 - e. The Commission's declaration of a [REDACTED] conversion deadline has put broadcasters and the public on notice that NTSC will cease [REDACTED] [REDACTED] in the future.
2. A simulcasting requirement is necessary to achieve this goal.
- a. Non-simulcast programming will mean that NTSC viewers will not have access to ATV programming even in a non-ATV format.

Where the [REDACTED] programming is different and inaccessible to NTSC viewers it cannot be said that the consumer investment in NTSC equipment has been protected.

- b. Broadcasters may begin to devote their best program efforts (or, at least, significant portions of their limited resources) to ATV development, at the expense of NTSC programming. Simulcasting is necessary for NTSC viewers to retain contact with quality programming program contact for NTSC.
 - c. For the reasons set forth under the First Amendment section, down-conversion equipment for NTSC receivers is not an adequate substitute for simulcasting.
- B. One of the FCC's goals is to expedite introduction of ATV service.
- 1. FCC policies that would encourage consumer investment in ATV receivers.
 - a. ATV receiver purchases may be stimulated by the availability of ATV-specific programming, pre-released ATV programs (which may later be made available to NTSC viewers), and multiple-plays of ATV special productions (either on a pay or free basis). If the consumer emphasis is

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on programs not otherwise available, then simulcast could impede or delay consumer investment in ATV.

- b. ATV receiver purchases may be stimulated simply by the availability of ATV's improved audio and video quality and new aspect ratio, much the way the introduction of "color" stimulated new receiver sales despite the availability of the same programming in black and white. Made for TV programming could be simulcast on NTSC without retarding ATV purchases.
 - c. ATV receiver purchases may not be stimulated where programming is simulcast to NTSC viewers and the perceived differences in quality are deemed too insignificant to warrant investment in new, expensive receivers.
 - d. 100% simulcasting may stimulate ATV receiver penetration by reducing the need for dual-mode receivers and thereby helping lower cost. Moreover, there will be NTSC stations without ATV partners until the NTSC cutoff date and NTSC sources after that, e.g., NTSC tapes, suggesting that the marketplace would still require NTSC/ATV dual-mode receivers.
2. FCC policies that would encourage broadcaster investment in ATV programming and transmission facilities.
- a. Broadcasters will have to make significant investments in ATV without any guarantee of additional revenues; allowing flexibility to experiment in programming and marketing of that programming could enable them to derive interim revenues that will facilitate their being able to continue to provide quality NTSC service while developing ATV services.
 - b. Strict simulcast rules and limitations on how ATV services may be marketed may discourage broadcaster willingness to invest in ATV.
 - c. Simulcasting would permit both ATV and NTSC viewers to enjoy the fruits of ATV programming investments and continuing broadcaster investments in NTSC programming would become increasingly unnecessary.

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- d. Especially during the early years of the transition to ATV, program producers are likely to produce product in both ATV and NTSC formats in order to assure that their product is highly marketable; the presence of simulcast rules will add further impetus to that likely scenario.
 - e. After two years, there will be new ATV applicants who, having no NTSC facility and not NTSC viewers, will not be burdened by simulcast restrictions. Initial applicants who are required to simulcast will be at a competitive disadvantage.
- C. In facilitating the transition from the NTSC standard to the new ATV standard, one of the Commission's goals is to reclaim the conversion for other uses.
- 1. Allowing the ATV and NTSC channels to operate independently will foster broadcaster and consumer reliance on the ATV channel as a separately programmed service. Such reliance will impede the transition process, making it more difficult to reclaim the conversion spectrum.
- D. FCC policies implementing territorial broadcast ATV have implications for alternative media.
- 1. Legislative proposals adopted by both houses of Congress would impose "must carry" obligations on cable television systems for carriage of NTSC programming and call for new carriage requirements once ATV broadcast standards are in place; whatever the legality of carriage requirements generally, in the absence of a simulcasting requirement there would be no justification for requiring additional channel capacity for carriage of a new broadcast service (especially where capacity limitations would dictate that other programming be dropped to make room for the ATV service).
- E. Definition of Simulcasting.
- 1. Simulcasting should be defined to permit differentiated programming.

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- a. To the extent there is not a 100% simulcast requirement, multiple-plays at different times of ATV productions, as well as pre-release, could stimulate audience demand.
 - (1) Allowance for multiple plays of ATV productions, especially during the introductory phase of ATV service, would permit broadcasters to better maximize use of their investments in new programming and allow for greater distribution of the limited supply of made-for-ATV product.
 - (2) Pre-release material may be made available because of the expected limited ATV audience and might not be available to broadcasters operating in a fully simulcast environment.
 - b. Time shifting within a day or other, longer period, may provide an attractive vehicle and spur ATV receiver penetration.
 - c. Exempting programs of under a specified length from any simulcast requirement might make implementation of ATV easier for broadcasters.
 - d. Pay-per-view of exclusive made-for-ATV programming may stimulate ATV receiver penetration and assist broadcasters in deriving an additional revenue stream from ATV transmissions.
 - (1) FCC rules permit broadcasters to operate in a subscription mode.
 - (2) Of the various kinds of "ATV specific" programming, pay-per-view is the only one which could not be simulcast to NTSC receivers, although NTSC reception displays could be accomplished via a decoding down-converter.
2. Simulcasting should not be defined to permit differentiated programming.
- a. By definition the term simulcast means to broadcast one programs over two channels simultaneously (e.g., AM/FM radio broadcasts and simultaneous broadcasts of concerts on TV/FM).
 - b. Efforts to define simulcasting to accommodate broadcaster interests in experimenting with new programming formats and differentiated programming can be expected to would-likely embroil the FCC in prohibited content-related regulations (efforts to identify and draw lines

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between the specific types of programming or marketing techniques that would or would not constitute "simulcasting" would involved content-based evaluations).

- c. The relationship of "simulcasting versus differentiated programming" to satisfying Ashbacker has been discussed above.
 - d. As a practical matter broadcasters may need to down-convert ATV programming for NTSC distribution in order to reach an audience of sufficient size to support investment in ATV programming.
3. Simulcasting should be defined in a way to permit flexibility in the identification of "same programming."
- a. The FCC should have no difficulty in defining simulcasting in a way that will accommodate differences inherent in the two transmission formats; namely, changes in aspect ratios, camera angles, numbers of cameras used, adoption of pan and scan editing techniques and other elements of what is otherwise identical programming.
 - b. Exempting commercials and promotional announcements (and permitting substitutions of different commercials or announcements) may encourage broadcaster investment in ATV without undercutting the policies underlying simulcasting.
 - c. A simulcasting requirement should not preclude use of excess data capacity, not required for ATV transmission for ancillary purposes, including revenue-generating purposes, on a non-interfering basis (similar to use of the SAP, SCA and VBI on NTSC transmissions).

F. Timing on Implementing Simulcasting.

- 1. It is too soon to adopt rules on simulcasting.
 - a. Initially, when ATV receiver penetration is low, NTSC programming is not likely to suffer; even as penetration increases, broadcasters will likely rely on upconverted NTSC programming to meet public interest obligations and rules are not needed to protect the embedded consumer investment in NTSC at the outset.

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- b. Too little is known about how ATV will develop to adopt rules that could impede acceptance of ATV; waiting until the FCC can amass data on receiver availability and penetration and the amount and type of ATV-produced programming will enable more realistic assessments on the need for rules.
 - c. It will be expensive and take time for program producers and broadcasters to convert their studio facilities to ATV production mode -- some flexibility from a strict simulcasting requirement will make this more likely to happen sooner.
2. Rules on simulcasting must be in place from the outset and should take effect immediately.
- a. Withholding application of the simulcast requirement until four years after the introduction of the ATV service (or during a phase-in period) will promote the development of ATV as a new programming service, rather than as a new technology.
 - b. Broadcasters need to know from the outset exactly what the FCC is expecting of them; consumers need to know what programming will be available during the transition to ATV; and other media that retransmit broadcast programming need to know what programming will be available in each format.
 - c. The costs associated with down-converting HDTV programming to NTSC is minimal, especially for material produced on film; during the early years most material will likely be produced in both formats in order to serve a broader consumer market.
 - d. Broadcasters are being awarded free spectrum in order to make the transition to ATV; a simulcasting requirement will ensure the continuing welfare of the NTSC viewers that they there are obligated to serve.
3. Rules on simulcasting must be in place from the outset, but should take effect at a predetermined later date.
- ~~4. No decision on simulcasting should be made at this time.~~